

No: 489716-II
Jefferson County Superior Court No: 15-2-00139-5

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

SUN LIFE ASSURANCE COMPANY OF CANADA,

Respondent,

v.

ABRIEL C. LEE, Respondent

AND

HEIDI A. LEE, Appellant

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR JEFFERSON COUNTY

The Honorable Keith Harper, Superior Court Judge

REPLY BRIEF OF HEIDI LEE

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TABLE OF CONTENTS

Table of Authorities	i-iii
A. INTRODUCTION.....	1
B. ARGUMENT	1-19
1. The Clean Hands Doctrine is Properly Before the Court Because it is Part of the Court’s Review of the Equities.....	2-6
2. Refusing to Enforce the Temporary Order Rewards and Thereby Incentivizes Ronald Lee’s Deceitful Conduct.....	6-11
a. Rather than Violating the Superior Court’s Broad Temporary Order, Ronald Lee Should have Petitioned the Court for a More Narrow One	7-8
b. Rather than Deceitfully Signing the Decree as it was Presented, Ronald Lee Should have Litigated to Establish a Decree with which he Intended to Comply.....	8-11
3. Enforcing the Terms of the Temporary Order Would not Award Heidi Lee a Windfall	11-13
4. Awarding the Full \$150,000 Value of the Life Insurance Policy was Both Proportional and Within the Superior Court’s Equitable Authority	13-14
5. Abriel Lee’s Reliance upon <i>In Re Marriage of Sager</i> is Misplaced	14-18
a. Julie Sager was a Policy Owner, Regardless of her Husband’s Violation of the Divorce Decree, Whereas Abriel Lee was Merely an Unlawfully- Designated Beneficiary	15-16
b. The Language of the Sager Decree was Ambiguous, Whereas the Decree in this Case was Clear	16-17

6. The Superior Court Abused its Discretion by Finding that Heidi Lee’s Motion for Summary Judgment was Frivolous	18-19
G. CONCLUSION	19-20
H. Certificate of Service	21

TABLE OF AUTHORITIES

	Page
<u>WASHINGTON CASES</u>	
<i>Bankston v. Pierce County</i> 174 Wn.App. 932, 301 P.3d 495 (2013)	2-3
<i>Bryant v. Joseph Tree Inc.</i> 119 Wn.2d 210, 829 P.2d 1099 (1992)	18-19
<i>In re Cooke</i> 93 Wn.App. 526, 969 P.2d 127 (1999)	18
<i>In re Marriage of Morris</i> 176 Wn.App. 893, 309 P.3d 767 2013)	13
<i>In re Marriage of Sager</i> 71 Wn.App. 855, 863 P.2d 106 (1993)	14-16
<i>John Doe v. Spokane & Inland Empire Blood Bank</i> 55 Wn.App. 106, 790 P.2d 853 (1989)	19
<i>Lunsford v. Saberhagen Holdings</i> 139 Wn.App. 334, 160 P.3d 1089 (2007)	5
<i>McAlpine v. Miller</i> 51 Wn.2d 536, 319 P.2d 1093 (1958)	3
<i>Paullus v. Fowler</i> 59 Wn.2d 204, 367 P.2d 130 (1961)	4

<i>Skimming v. Boxer</i> 119 Wn.App. 748, 82 P.3d 707 (2004)	18
<i>Standard Ins. Co. v. Schwalbe</i> 110 Wn.2d 520, 755 P.2d 802 (1988)	4, 7, 13, 18
<i>State v. McNally</i> 125 Wn.App. 854, 106 P.3d 794 (2005)	3
<i>State v. Nether</i> 52 Wn.App. 298, 759 P.2d 475 (1988)	17
<i>State v. Yates</i> 161 Wn.2d 714, 738, 168 P.3d 359 (2007)	3
<i>State, Dept. of Ecology v. City of Spokane Valley</i> 167 Wn.App. 952, 275 P.3d 367 (2012)	17
<i>State Farm Mut. Auto Ins. Co. v. Amirpanahi</i> 50 Wn.App. 869, 751 P.2d 329 (1988)	5

A. INTRODUCTION

Litigants in a family law setting should be able to rely upon a superior court enforcing its orders, because the structure created by these orders allows parties trust the system to protect them both legally and financially during pending litigation. Where courts refuse to enforce these orders, uncertainty and insecurity will encourage litigants to take extrajudicial measures to preserve their rights while the legal system resolves their disputes. Heidi Lee followed the superior court's orders. Ronald Lee did not. Heidi Lee sought enforcement of those orders violated by Ronald Lee, but the superior court denied her relief; and it inexplicably sanctioned her for frivolously seeking enforcement of its orders, as-written. Heidi Lee now asks this Court to reverse the superior court's erroneous decisions.

B. ARGUMENT

The Jefferson County Superior Court erred when it pardoned the deceitful and contemptible conduct of Ronald Lee. When Heidi Lee brought the violations to the superior court's attention, she merely asked for the court to enforce its orders as-written. The superior court erred when it refused to enforce the express terms of its temporary order and divorce decree as a proportional sanction for Ronald Lee's violations of those orders. It also improperly sanctioned Heidi Lee for a frivolous action under the local superior court rules. When this Court considers the equities in the context of

the superior court's written orders, it should come to the conclusion that the superior court erred; and it should reverse the matter.

1. The Clean Hands Doctrine is Properly Before the Court Because it is Part of the Court's Review of the Equities.

Abriel Lee would have this Court ignore fundamental principles of equity while adjudicating an equitable claim--an approach as nonsensical as asking a court to interpret an ambiguous statute without resorting to the well-understood canons of statutory construction. Abriel Lee relies on *Bankston v. Pierce County*, 174 Wn.App. 932, 301 P.3d 495 (2013) to support this proposition. Her reliance is misplaced.

In *Bankston*, this Court declared a contract between Pierce County and Richard Bankston void because Richard Bankston's sole proprietorship had not actually bid on the contract. *Id.* at 939. His father's sole proprietorship had actually been the bidding party; and the contract subsequently executed between Richard Bankston and Pierce County was therefore formed in violation of competitive bidding laws because it was awarded to a party other than the lowest bidder. *Id.* at 939-940. On appeal, this Court refused to consider Richard Bankston's equitable estoppel argument, broadly proclaiming that, "Richard's response to the motion for summary judgment did not raise equitable estoppel or any other reason preventing the County from denying the existence of an enforceable

Contract.” *Id.* at 941. In support of his equitable estoppel argument, Bankston had erroneously cited to a trial court record of a “substantial compliance” argument. *Id.*

Had Bankston actually raised an equitable estoppel argument at the trial court level, it would have been conspicuous because “[a]pplication of equitable estoppel against the government is disfavored.” *See State v. Yates*, 161 Wn.2d 714, 738, 168 P.3d 359 (2007). Also, applying equitable estoppel against the government involves the consideration of a distinctive five-part test¹ that is in no way implicated by a substantial compliance argument. *See e.g. State v. McNally*, 125 Wn.App. 854, 868, 106 P.3d 794 (2005). This Court rightly refused to consider the equitable estoppel argument in *Bankston* because the substantial compliance argument did not include, or even suggest, the very specific and disfavored remedy of equitable estoppel against the government.

In the instant case, however, Heidi Lee’s request for equitable relief at the trial court level squarely implicated longstanding equitable principles such as the “clean hands doctrine.” Heidi Lee asked the superior court to

¹ A party seeking to apply equitable estoppel against the government must establish: (1) a party’s admission, statement or act inconsistent with its later claim; (2) action by another party in reliance on the party’s first act, statement or admission; (3) injury that would result to the relying party from allowing the first party to contradict or repudiate the prior act, statement or admission; (4) equitable estoppel must be necessary to prevent manifest injustice; and (5) the exercise of governmental functions must not be impaired as a result of the estoppel.” *McNally*, at 868.

void the designation of Abriel Lee as beneficiary to Ronald Lee's life insurance and award her the life insurance proceeds according to the terms of the temporary order and divorce decree he violated. The relief Heidi Lee sought was equitable in nature, because she "obtained an equitable interest in the policy which precluded [the insured] from changing the beneficiary..." See *State v. Schwalbe*, 110 Wn.2d 520, 525, 755 P.2d 802 (1988).

Furthermore, Heidi Lee's reliance upon *Schwalbe* directly implicated the clean hands doctrine because the claim addressed therein sounded in equity. In *Schwalbe*, the Washington Supreme Court recognized that there was no adequate remedy at law. *Id.* at 526 ("At the time this action was brought, Mr. Schwalbe was deceased thus precluding a remedy at law in the form of a contempt proceeding. Recognizing that no remedy at law was available, the trial court can resort to its equity powers."). Citing *Paullus v. Fowler*, 59 Wn.2d 204, 214, 367 P.2d 130 (1961), the Court in *Schwalbe* proclaimed the equitable maxim, "equity requires that to be done which ought to have been done." 110 Wn.2d 520, 526. To support the aforementioned equitable principle, *Paullus* cited *McAlpine v. Miller*, 51 Wn.2d 536, 541, 319 P.2d 1093 (1958), which is a case that involved application of the clean hands doctrine. ("The equitable maxims that he who seeks equity must do equity and, he who comes into equity must come with clean hands, apply to this case.").

It is of no moment that Heidi Lee's summary judgment motion did not use the exact phrase "clean hands doctrine." Heidi Lee, without a remedy at law because Ronald Lee had died, was seeking equitable relief based upon Ronald Lee's contemptible and deceitful conduct. Although Abriel Lee proclaims her own innocence, and endeavors to sidestep the effect of her father's unclean hands, her expectancy interest that vested upon her father's death was solely a product of her father's violation of a temporary court order, and deceitful noncompliance with the clear mandate of the dissolution decree. Adjudication of these competing equitable positions necessarily implicates equitable principles, especially the "clean hands doctrine."

Even if the Court believes that the "clean hands doctrine" was not raised at the trial court level by virtue of Heidi Lee's request for equitable relief under *Schwalbe*, the Court should exercise its discretion to consider it. This is appropriate because, "if an issue raised for the first time on appeal is 'arguably related' to issues raised in the trial court, a court may exercise its discretion to consider newly-articulated theories for the first time on appeal." *Lunsford v. Saberhagen Holdings*, 139 Wn.App. 334, 338, 160 P.3d 1089 (2007) (citing *State Farm Mut. Auto. Ins. Co. v. Amirpanahi*, 50 Wn.App. 869, 751 P.2d 329 (1988)).

This Court should rely upon well-established equitable principles to guide its consideration of this appeal. While considering the equities in a case, disregarding a fundamental equitable principle such as the “clean hands doctrine” would lead to absurd results. The Court should not refuse to reach Heidi Lee’s argument on this subject.

2. Refusing to Enforce the Temporary Order Rewards and Thereby Incentivizes Ronald Lee’s Deceitful Conduct

This Court should render a decision that encourages parties to a divorce to carefully craft temporary orders and divorce decrees; and to resolve disputes before violating such orders. This Court should not render a decision that allows a litigant to arbitrarily pick and choose which court orders it will follow.

Abriel Lee insists that there should be no consequence for Ronald Lee’s violation of the temporary order and his deceitful signing of, and contemptible violation of, the dissolution decree. Inexplicably, the superior court agreed, declaring during its oral ruling, “long story short, I don’t think the issue at all is how much is a violation of a Court order worth? I think that’s a complete mischaracterization of it. I mean, people violate this Court’s orders all the time.” (VRP 32). The superior court’s nonchalant disregard for its orders is troubling; and it was an abuse of discretion. The superior court should have been far more concerned about

compliance with its orders. *See Schwalbe*, at 526. (“It is the duty of courts to enforce their orders.”).

This Court’s decision has implications which reach further than just one case in one small county. This Court should apply the law in a manner that encourages litigants, even terminally-ill ones, to abide by court orders. The alternative is a chaotic free-for-all where litigants pick and choose which orders to follow. Had Ronald Lee been concerned that Heidi Lee may receive a “windfall” if he died while the divorce was pending, he could have litigated to insist upon a temporary order which limited Heidi Lee’s recovery to what would be deemed owed under a divorce decree. Ronald Lee did not seek such a limit; and the order signed by the court made Heidi Lee the sole beneficiary of the life insurance.

a. Rather than Violating the Superior Court’s Broad Temporary Order, Ronald Lee Should have Petitioned the Court for a More Narrow One

The temporary order unequivocally prohibited Ronald Lee from changing the beneficiary of his insurance policy.

Both parties are restrained and enjoined from assigning, transferring, borrowing, lapsing, surrendering or changing entitlement of any insurance policies of either or both parties whether medical, health, life or auto insurance.

(CP 179). Ronald Lee could have sought language in the temporary order which limited Heidi Lee's recovery to whatever he perceived to be Heidi's "fair share." Because of his health and the very real possibility that he would die while the temporary order was in effect, Ronald Lee could have asked, for example, to name Abriel Lee as a co-beneficiary of his one-half community property interest in the life insurance policies.

Instead, Ronald Lee did not argue for any limit on Heidi Lee's recovery; and the temporary order signed by the superior court contemplated Heidi Lee's unencumbered recovery of 100% of the insurance proceeds if Ronald Lee died. At the time of the temporary order, neither Ronald Lee nor the superior court balked at the fact that Heidi Lee would recover 100% of the life insurance proceeds. There was never any discussion regarding whether such a recovery would be a windfall. As with the temporary order, Ronald Lee could have litigated the language of decree at the time it was drafted and filed to protect his interests.

b. Rather than Deceitfully Signing the Decree as it was Presented, Ronald Lee Should have Litigated to Establish a Decree with which he Intended to Comply

When the divorce decree was drafted, Ronald Lee had an ideal opportunity to insist upon a provision which ensured that Heidi Lee could not receive any life insurance award in excess of his obligation to her, but

inexcusably failed to do so. His financial liability under the divorce decree was known; and the life insurance policy had a known monetary value as well. It would have been very simple for Ronald Lee to ask the superior court to allow him to designate Abriel Lee as a co-beneficiary up to an amount of the life insurance policy value, less what he owed under the decree.

While Ronald Lee remained silent, the following was ordered in two separate sections of the divorce decree: (“The husband shall continue to name *the wife* as *the beneficiary* on his life insurance policy...” (CP 229, 230) (emphases added). Ronald Lee signed the decree, ostensibly deciding it was more desirable to disregard a court order, *for a second time*, than it was to litigate his position before the trial court to obtain an order which allocated the assets in the manner which he believed was appropriate.

As a result of Ronald Lee’s silence, the language of the decree was explicit and clear regarding Heidi Lee’s status as the *sole* beneficiary of the life insurance policies.

3.7 MAINTENANCE

...

Other: The husband shall continue to name the wife as *the* beneficiary on his life insurance policy to secure future payment of

both his spousal maintenance obligation and the judgment entered herein.

...

3.15 OTHER

The husband shall continue to name the wife *the* beneficiary of this life insurance policy until both his spousal maintenance obligation terminates and the judgment is paid in full.

(CP 229-30) (emphases added). The order did not mandate that Heidi Lee remain as “a beneficiary.” It instructed that she be maintained as “the beneficiary.” At the time of Ronald Lee’s death, it is undisputed that he had not paid the judgment in full. (CP 286) (“at the time of his passing on April 16, 2015, Ron Lee owed Defendant Heidi A. Lee \$32,384.00 plus interest at 2%.”) (CP 255). Heidi Lee should have been the only beneficiary of Ronald Lee’s life insurance policy at the time of his death because he had not paid the judgment in full.

It should not escape this Court’s awareness that Abriel Lee seeks a favorable interpretation of the dissolution decree, unconcerned with the fact that she is asserting her father’s dubious standing under the decree. This Court should not allow her to shroud her father’s misconduct with her relative “innocence” and seek the benefit of a dissolution decree for which her father demonstrated such overt contempt and disregard.

This Court's decision is about the dignity of the judiciary and the expectation that litigants fully pray for relief they seek and follow court orders regarding their rights and obligations. It is offensive to notions of fair play and due process for courts to reward deceitful and contemptible conduct by parties to litigation, even after their death.

3. Enforcing the Terms of the Temporary Order Would not Award Heidi Lee a Windfall

Any life insurance award with a monetary value that exceeds the decedent's financial obligation or contribution to the beneficiaries is a windfall of sorts. Regardless of who received the \$150,000 from Ronald Lee's life insurance policy, it could be characterized as financial windfall. Nonetheless, Abriel Lee asserts that it would be unfair for this Court to enforce the terms of the temporary order, as-written, because Heidi Lee would receive a "windfall."

The Court should remember that Abriel Lee's notion of a "windfall" is anything more than what Heidi Lee was owed under the divorce decree. The problem with that position is that Heidi Lee incurred additional expenses seeking to claim the insurance proceeds to which she was entitled well before Heidi Lee's "settlement offer."

Ronald Lee died on April 13, 2015, without having fully satisfied his financial obligation to Heidi Lee. (CP 255). Heidi Lee did not hear

from Abriel Lee about her father's remaining obligation under the decree for five months when Abriel Lee's attorney sent a settlement letter. (CP 306). In between that time, Heidi Lee incurred legal expenses responding to Sun Life's July 27, 2015, interpleader claim. (CP 1). This legal expense was necessitated solely by virtue of the competing claim on the life insurance proceeds triggered by Ronald Lee's violation of the superior court's temporary order and divorce decree. This legal expense meant that Abriel Lee's September 10, 2015, settlement offer would not "make Heidi Lee whole," because it only offered what was already owed under the decree, *without any accommodation for subsequent legal expenses*. (CP 305-06). Only after two additional months did Abriel Lee make an offer of \$45,000, which was still less than one third what was actually owed based on the plain language of the superior court's temporary order and divorce decree.

Ronald Lee violated a temporary order to deprive Heidi Lee of the *exclusive* expectancy interest she had in the entire \$150,000 life insurance policy amount. An equitable return to the status quo before Ronald Lee violated the temporary order would not entitle Heidi Lee to a windfall—it would award her only what was she was due under the express terms of that order. There is no evidence that Ronald Lee ever complained, while alive, about how the temporary order would give Heidi Lee a "windfall."

Ronald Lee did not object to the terms of the order when it was signed by the superior court; so Abriel Lee should not be able to defend her father's violation of the order after the fact. The entry of the divorce decree does not put Ronald Lee's violation of the temporary order beyond the superior court's reach because the superior court had the authority to restore the status quo—authority it should have exercised.

4. Awarding the Full \$150,000 Value of the Life Insurance Policy was Both Proportional and Within the Superior Court's Equitable Authority

In adjudicating family law matters, “the court has broad equitable powers.” *In re Marriage of Morris*, 176 Wn.App. 893, 903, 309 P.3d 767 (2013). This includes the equitable power “to order a return to the status quo or to treat a transaction invalid where an injunction has been violated.” *Schwalbe*, at 526. Enforcing the temporary order, as-written, was not an unreasonable consequence for Ronald Lee's blatant disregard of the superior court's orders and deceitful conduct during the litigation. The Court should remember that Ronald Lee violated the temporary order with a state of mind to put the full \$150,000 value of the policy out of Heidi Lee's reach. If he had any other state of mind, he would have simply made Abriel Lee a proportional co-beneficiary along with Heidi Lee.

Ronald Lee's violation of the divorce decree was also motivated by greed. He wanted to ensure that Heidi Lee did not have access to any

amount of the \$150,000 life insurance policy, despite the fact that the superior court ordered him to maintain her as the sole beneficiary until his judgment was paid. Ronald Lee broke the temporary order. He concealed that violation when he sat through the divorce proceedings. The divorce decree presented for his signature assumed his compliance with the temporary order. Even then, he failed to bring his violation of the temporary order to the attention of the superior court; and he was in violation of the divorce decree from the moment he signed it. When the Court considers a proportional remedy, the monetary “value” of his deceit, \$150,000, is relevant.

5. Abriel Lee’s Reliance upon *In Re Marriage of Sager* is Misplaced

The superior court erred when it relied upon Abriel Lee’s misreading of this Court’s decision from *In re Marriage of Sager*. *Sager* does not mandate the result in this case because it is distinguishable both on the interest that the parties had in the life insurance and in the language of the orders violated.

In that case, Ocie Sager divorced his first wife, Estelle; and the dissolution decree stated that he “shall *make* the minor children of the parties...beneficiaries of the medical and life insurance policies which exist through his place of employment.” 71 Wn.App. 855, 857, 863 P.2d

106 (1993) (emphasis added). Ocie Sager remarried, made his new wife, Julie, the sole beneficiary of the policy in violation of the dissolution decree, and subsequently died. *Id.* at 857-58.

a. Julie Sager was a Policy Owner, Regardless of her Husband's Violation of the Divorce Decree, Whereas Abriel Lee was Merely an Unlawfully-Designated Beneficiary.

This Court observed, “it seems clear that when Ocie died, the Northwestern policy was his *and Julie's community property*. It follows that Julie *owns* a one-half interest in the policy, and that Estelle cannot claim against that half.” *Id.* (emphases added) (internal citation omitted). This Court's analysis in *Sager* hinged upon the fact that Julie Sager's interest in the policy was that of an *owner* in the form of her 50% community property interest, whereas the competing interest of Estelle's children was merely an *expectation* interest of a beneficiary. *Id.* at 863 (“the Supreme Court has clearly distinguished the ownership interest of a policyholder from the expectancy interest of a beneficiary.”). Importantly, Julie Sager's *ownership* interest accrued, at the time of marriage, irrespective of her husband's unlawful designation of her as a beneficiary.

In this case, Abriel Lee lacked any interest in the insurance proceeds independent of Ronald Lee's unlawful designation of her as the sole beneficiary. Her expectancy interest in the life insurance policy

existed only after Ronald Lee violated the unambiguous language of the temporary order which precluded him from changing the beneficiary of his life insurance policy. Her status as sole beneficiary persisted after entry of the divorce decree only because Ronald Lee maintained his deceit by violating its plain language.

**b. The Language of the Sager Decree was Ambiguous,
Whereas the Decree in this Case was Clear.**

This Court noted in *Sager* that, "...the decree here is ambiguous...it did not require Ocie to name the minor children as the *sole* beneficiaries." *Id.* at 862. "The decree precluded Ocie from designating co-beneficiaries whose interest would infringe upon the amount of insurance needed as a security for child support, but it did not preclude him from naming co-beneficiaries whose interest would not have that effect." *Id.* at 862-63.

In contrast, the dissolution decree in this case was unambiguous. It required Ronald Lee to maintain Heidi Lee as the sole beneficiary of the policy. (CP 229, 230) ("The husband shall continue to name the wife as *the beneficiary* on his life insurance policy...") (emphasis added). Any court's interpretation of these provisions should consider the specific language used. The decree used the definite article, "the." "The rules of grammar...provide that the definite article, 'the', is used 'before nouns of

which there is only one or which are considered as one.” *State, Dept. of Ecology v. City of Spokane Valley*, 167 Wn.App. 952, 965, 275 P.3d 367 (2012) (citing *State v. Neher*, 52 Wn.App. 298, 300, 759 P.2d 475 (1988)).

Heidi Lee was the only beneficiary of the life insurance policy under the divorce decree, as-written. The decree did not require Ronald Lee to *make* Heidi Lee the beneficiary because she was already supposed to be *the* sole beneficiary. The decree mandated Heidi Lee’s continued status as *the* sole beneficiary of the policy because Ronald Lee had not fully satisfied the judgment he owed Heidi Lee. As such, the command of the decree in this case was markedly different than the one in *Sager*, and should be treated as such.

These distinct differences between *Sager* and the instant case refute Abriel Lee’s claim that *Sager* “absolutely limits a wrongfully removed beneficiary’s interest in a violator’s life insurance proceeds to the sum the life insurance beneficiary designation was to secure.” (Abriel Lee’s Response, p. 13). This Court should reverse the Jefferson County Superior Court, both as to the summary judgment award in favor of Abriel Lee; and the determination that Heidi Lee’s motion was frivolous.

6. The Superior Court Abused its Discretion by Finding that Heidi Lee's Motion for Summary Judgment was Frivolous

Heidi Lee was sanctioned by the superior court after seeking a legal outcome specifically mandated by the express terms of both its temporary order and divorce decree. She cited to Washington State Supreme Court precedent where a beneficiary designation in violation of an injunction was voided on equitable grounds similar to the instant case. *Schwalbe*, at 527. Abriel Lee cited to no legal authority establishing that Heidi Lee, or any litigant for that matter, is required to settle a cause of action. The fact that Heidi Lee refused a settlement offer does not mean that she was acting in bad faith.

Counsel can find no decisions interpreting Jefferson County LCR 7.8, but the policy and prudential concerns regarding CR 11 should be instructive to this Court.

CR 11 sanctions have a potential chilling effect. And so the trial court should impose sanctions only when it is patently clear that a claim has *absolutely no chance of success*. The fact that a complaint does not prevail on its merits is not enough.

Skimming v. Boxer, 119 Wn.App. 748, 755, 82 P.3d 707 (2004) (emphasis added) (citing *In re Cooke*, 93 Wn.App. 526, 529, 969 P.2d 127 (1999); *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 220, 829 P.2d 1099 (1992)). “CR 11 is not a mechanism for providing attorney’s fees to a prevailing

party where such fees would otherwise be unavailable.” *Bryant*, at 220 (citing *John Doe v. Spokane & Inland Empire Blood Bank*, 55 Wn.App. 106, 111, 780 P.2d 853 (1989)).

The superior court abused its discretion when it sanctioned Heidi Lee under LCR 7.8. The legal relief Heidi Lee sought was more than tenable under a reasonable analysis of the language of the temporary order and divorce decree. Her claim was also supported by a fair reading of the decision of the Washington State Supreme Court in *Schwalbe*. The Court should reverse the superior court’s finding that her claim was frivolous.

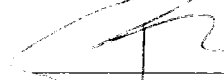
C. CONCLUSION

The Court should reverse the superior court’s summary judgment award and its award of attorney’s fees to Abriel Lee. Voiding Ronald Lee’s deceitful and unlawful change of beneficiary is a straightforward and proportional remedy for his violations of the temporary order and divorce decree that will encourage similarly-situated litigants to address the scope of a temporary order or divorce decree to litigate rather than violate such orders. Similarly, enforcing the plain language of the divorce decree is a proportional remedy for Ronald Lee’s deceit. It will remind courts to enforce their orders and send a strong message to future litigants that court orders should be followed. Heidi Lee’s efforts to secure her legal rights

were not bit frivolous; and the Court should keep in mind the chilling effect that follows casual imposition of such sanctions.

Respectfully Submitted this 24 day of October, 2016.

LAW OFFICE OF BRET ROBERTS, PLLC.

A handwritten signature in black ink, appearing to be 'Bret Roberts', written over a horizontal line.

BRET ROBERTS, WSBA No. 40628
Attorney for Appellant

PROOF OF SERVICE

I, Bret Roberts, certify that, on this date:

I filed Heidi Lee's Reply Brief electronically with the Court of Appeals, Division Two, through the Court's online filing system.

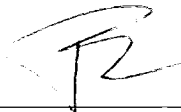
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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Port Townsend, Washington, on October 24 2016.



Bret Roberts, WSBA 40628
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JEFFERSON ASSOCIATED COUNSEL

October 24, 2016 - 4:55 PM

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